



California Fair Political Practices Commission

October 28, 1988

Robert D. Winston
City Attorney
City of Mt. Shasta
P.O. Box 263
Mt. Shasta, CA 96067

Re: Your Request For Advice
Our File No. I-88-318

Dear Mr. Winston:

You have requested general advice about application of conflict of interest provisions of the Political Reform Act (the "Act")^{1/} to a licensed contractor who may be appointed to the city council.

Because you have not requested advice about a specific pending decision, we are treating your request as one for informal assistance.^{2/}

QUESTIONS

The city council wants to appoint to a vacancy on the city council a licensed contractor who has done business with and will continue to do business with the city.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3), copy enclosed.)

Must the contractor refuse the appointment, or may the contractor assume office, but disqualify himself from decisions in which he has a financial interest?

CONCLUSION

The Act does not prohibit any private citizen from becoming a public official. The contractor may accept the city council's appointment to the city council. The contractor's previous contracts with the city would not disqualify him from participating in city council decisions.

Government Code Section 1090 may restrict the contractor's ability to contract with the city in the future, if the contractor is appointed to the city council. The Commission does not administer this section. Therefore, we refer you to the Office of the Attorney General for more advice about this section.

FACTS

The City Council of the City of Mt. Shasta is considering appointing a licensed contractor to a vacancy on the city council. The contractor has done much work with the city. If appointed to the city council, he would plan to continue to contract with the city because his is the only business in Mt. Shasta able to do the work the city needs.

ANALYSIS

The Act does not prohibit any person from becoming a public official. Therefore, the city council can appoint to the city council a licensed contractor who does work for the city. The contractor may accept the appointment.

Section 87100, however, prohibits a public official from making, participating in making or in any way attempting to use his or her official position to influence a governmental decision in which the official has a financial interest. An official has a financial interest in a decision if the decision will have a foreseeable and material financial effect, different from the effect on the general public, on the official or a member of the official's immediate family, or on the following economic interests:

- (a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103.

Therefore, the contractor is disqualified from a decision that will have a foreseeable and material financial effect, different from the effect on the general public, on his own business or on a client's business. For example, the contractor would be disqualified from a city council decision concerning a project owned by a developer who had paid or promised to pay the contractor \$250 or more within 12 months before the decision.

Nevertheless, the preceding analysis differs if the city is a source of income to the contractor and the decision before the city council affects the city. Under the Act, the contractor is not disqualified from participating in a decision just because the decision affects the city. (Hart Advice Letter, No. A-83-264, copy enclosed.) As explained in the Hart letter, for purposes of the Act a decision affecting the city affects the general public. Because the effect of the decision on the city is the same effect as on the general public, disqualification is not required. (Regulation 18703, copy enclosed.) Thus, the contractor would not be disqualified from participating in city council decisions because of his contracts with the city.


Robert D. Winston
October 28, 1988
Page -4-

Although the Act may not require disqualification from a particular decision, other statutory provisions, such as Government Code Section 1090, may restrict the contractor's future ability to contract with the city. The Commission, however, does not administer this section. Therefore, we refer you to the Office of the Attorney General for advice regarding Section 1090.

I hope this letter satisfactorily answers your questions. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:aa

Enclosures

WRAY E. KIRSHER
ROBERT D. WINSTON
ROBERT B. BOSTON

Weed Office
219 Main Street
P.O. Box 669
Weed, California 96094

KIRSHER, WINSTON, & BOSTON
ATTORNEYS AT LAW

400 13 1 47 11 88
328 Mt. Shasta Blvd., Suite 9
P.O. Box 263
Mt. Shasta, California 96067
(916) 926-3861

9 August 1988

Fair Political Practices Commission
428 J Street
Sacramento, CA 95814

Re: Legal Assistance
Our Client: City of Mt. Shasta

Dear Sir or Madame:

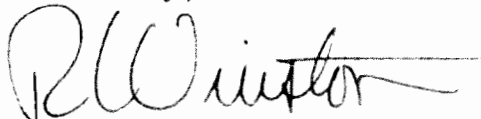
The City Council of the City of Mt. Shasta desires to fill a vacancy on the Council with the appointment of a licensed contractor who has in the past done much business with the City, and expects to continue to do so.

In order to avoid a conflict of interest, must the prospective appointee make a choice between declining either the appointment or the future business? As an alternative, would it be acceptable for him to take the appointment, but abstain from voting on any future matters in which the conflict would be involved?

Mt. Shasta is a small town, and the prospective appointee's business is the only one in town which has the ability to do some of the work which the City has needed. Although a qualified contractor might be obtained from a neighboring city to do certain jobs, the extra travel would be sure to result in a higher bid.

Thank you for your assistance.

Sincerely,



Robert D. Winston
City Attorney,
City of Mt. Shasta
RDW/jkb

WRAY E. KIRSHER
ROBERT D. WINSTON
ROBERT B. BOSTON

88-318
Weed Office
219 Main Street
P.O. Box 669
Weed, California 96094

S. P. I.
Aug 15 1 47 PM '88
KIRSHER, WINSTON, & BOSTON

ATTORNEYS AT LAW
326 N. Mt. Shasta Blvd., Suite 9
P.O. Box 263
Mt. Shasta, California 96067
(916) 926-3861

9 August 1988

Fair Political Practices Commission
428 J Street
Sacramento, CA 95814

Re: Legal Assistance
Our Client: City of Mt. Shasta

Dear Sir or Madame:

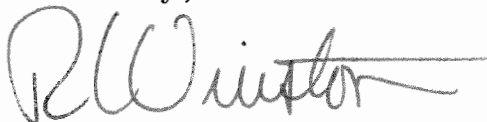
The City Council of the City of Mt. Shasta desires to fill a vacancy on the Council with the appointment of a licensed contractor who has in the past done much business with the City, and expects to continue to do so.

In order to avoid a conflict of interest, must the prospective appointee make a choice between declining either the appointment or the future business? As an alternative, would it be acceptable for him to take the appointment, but abstain from voting on any future matters in which the conflict would be involved?

Mt. Shasta is a small town, and the prospective appointee's business is the only one in town which has the ability to do some of the work which the City has needed. Although a qualified contractor might be obtained from a neighboring city to do certain jobs, the extra travel would be sure to result in a higher bid.

Thank you for your assistance.

Sincerely,



Robert D. Winston
City Attorney,
City of Mt. Shasta
RDW/jkb



California Fair Political Practices Commission

August 19, 1988

Robert D. Winston
City Attorney
Kirsher, Winston & Boston
P.O. Box 263
Mt. Shasta, CA 96067

Re: 88-318

Dear Mr. Winston:

Your letter requesting advice under the Political Reform Act was received on August 15, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margatita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

- We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
Diane M. Griffiths
General Counsel

DMG:plh